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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Creation of a Low
Power Radio Service

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MM Docket No. 99-25

RM-9208

RM-9242

To: The Commission

COMMENTS OF PILOT COMMUNICATIONS, LLC

Pilot Communications, LLC ("Pilot"), 1/ pursuant to Section 1.415 of the Commission's Rules, respectfully submits these comments in response to the *Notice of Proposed Rulemaking* in the the above-captioned proceeding, which proposes the creation of up to three different classes of low power FM radio ("LPFM") stations. 2/

The Commission should reject the proposal to create new LPFM stations as contrary to the public interest and a threat to the present and future success of radio. Specifically, adoption of the proposal would:

- threaten existing radio service with substantially increased interference;
- risk the Commission's ability to monitor all interference;

1/ Pilot owns the following radio stations in Maine and New York: WEZW(AM), Augusta, Maine, WMME(FM), Augusta, Maine, WCRQ(FM), Dennysville, Maine, WBPW(FM), Presque Isle, Maine, WOZI(FM), Presque Isle, Maine; WQHR(FM), Presque Isle, Maine, WTVL(AM), Waterville, Maine, WEBB(FM), Waterville, Maine, WAQX-FM, Manlius, New York, WKRT(AM), Cortland, New York, WIII-FM, Cortland, New York, WNSS(AM), Syracuse, New York, WNTQ-FM, Syracuse, New York, and WLTi(FM), Syracuse, New York.

2/ *Notice of Proposed Rule Making, Creation of a Low Power Radio Service*, MM Docket No. 99-25 (released February 3, 1999) ("Notice").

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- contradict substantial Commission precedent regarding proposals that risk new interference;
- endanger the future of radio by delaying or preventing any transition to digital audio broadcasting; and
- convey no significant public benefit, in light of the diverse programming already available from a variety of media sources.

Such considerations compel denial of any LPFM proposal at this time.

I. THE COMMISSION CANNOT AND SHOULD NOT DEPRIVE LISTENERS OF EXISTING SERVICE BY AUTHORIZING LPFM STATIONS THAT WILL CAUSE OBJECTIONABLE INTERFERENCE

A. LPFM Will Risk Significant Interference to Existing Stations

The *Notice* proposes to create one, two or three new classes of LPFM stations, which would range in power from one to 1,000 watts, and would not be subject to third-adjacent and, perhaps, second-adjacent spacing or interference requirements.

In theory, elimination of second- and third-adjacent interference protections for a whole new class of stations *must* cause an increased risk of objectionable interference to radio reception throughout the United States. But the increase in interference that would result from any LPFM implementation is not merely theoretical. Recent research confirms that LPFM facilities of the sort suggested in the *Notice* would cause reduced signal quality to large numbers of radio listeners. The results of such studies corroborate what many full power operators know from experience: the elimination of second-adjacent, and, in some cases, third-adjacent channel protections will increase interference. ^{3/}

^{3/} See, e.g., Comments of Duey Edward Wright, President, Midwest Communications, Inc. at 3 (noting that a FM translator operating on a third-adjacent channel is causing interference to a Class C FM station's operations).

The burden must be on LPFM proponents to disprove such predictive and empirical showings of interference. Yet, of the thousands of potential LPFM applicants cited by the Commission, none have demonstrated, through field testing, that LPFM poses no measurable risk of interference to the existing quality of the FM band. The *Notice*'s analysis is likewise deficient: it not only lacks actual technical and historical proof in support of the LPFM proposal, 4/ but also suffers from the bias inherent in its results-oriented presentation. 5/ Accordingly, the Commission cannot risk adoption of a proposal that risks significant interference to existing radio stations.

B. Worse, the Commission Will Not Be Able to Remedy LPFM Interference

The Commission has recognized that it cannot monitor the public interest programming and operating schedule of all LPFM stations. 6/ Yet, it is relatively silent as to how it intends to supervise and cure interference from such stations. As interference should be a fundamental concern of the Commission *and* other radio stations, silence as to how the Commission will act to protect other stations from LPFM interference is troubling, especially as the Commission already has difficulty resolving interference complaints involving secondary operations. Hundreds of new LPFM facilities -- unfettered by traditional interference safeguards

4/ See, e.g., Dissent of Commissioner Harold W. Furchtgott-Roth, *Notice*, at 1 (noting that the Commission "made no effort to assess, much less quantify" what effect eliminating interference protections would have on existing radio service).

5/ For example, the *Notice* conceded that its proposal was not based on detailed interference studies or reasonable estimates of the levels of protection needed by existing stations, but were simply ones that would enable the largest number of LPFM stations to be implemented. See *Notice* at ¶ 50.

6/ See *Notice* at ¶¶ 72, 77.

and often operated by persons new to radio -- only will increase the number of interference complaints, with the result being further delay in the resolution of any particular complaint.

Accordingly, the Commission should not adopt any LPFM proposal until it can promise existing radio stations that any LPFM-related interference will be eliminated within days, not months.

C. Commission Precedent Confirms That LPFM, Which Risks Objectionable Interference to Existing Service, Cannot Be Adopted

Commission precedent has established a clear policy of protecting established stations (and their listeners) against the risk of signal disruption. ^{7/} In a number of proceedings, the Commission has refused to change technical requirements that might result in increased interference to existing or potential radio service. ^{8/} Even when relief from interference requirements has been shown to be necessary, the Commission has refused to extend such relief to any but an existing and limited class of broadcast stations or has required express consent from any adversely affected stations. ^{9/} Indeed, a substantial body of Commission precedent has refused individual requests for waivers of interference safeguards -- despite promises to provide

^{7/} See, e.g., 47 C.F.R. §§ 73.207, 73.213 & 73.215.

^{8/} See, e.g., *Deregulation of Radio (Part I)*, 84 FCC 2d 968, 977-78 (¶ 25) (1981) (refusing to relax technical requirements, lest the nation “see a return to that unregulated period prior to 1927 when chaos rode the air waves”).

^{9/} See, e.g., *Grandfathered Short-Spaced FM Stations*, 12 FCC Rcd 11840, 11849 (¶¶ 27, 29) (“*Grandfathered Short-Spacing Order*”) (noting that change in interference protections was limited to only a “small group of stations” and that Commission had “no intention of relaxing second-adjacent-channel and third-adjacent-channel spacing requirements . . . for any group except pre-1964 grandfathered stations.”); see also *Notice of Proposed Rule Making, 1998 Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*, MM Docket No. 98-93 at ¶¶ 17-28 (released June 15, 1998) (proposing some relaxation of interference protections only in very limited circumstances *and* when all potentially affected stations have consented).

equivalent interference protection to all affected broadcasters and the special circumstances of many such cases -- except when the public interest benefits of the proposed waiver are certain and “compelling.” ^{10/}

Under such precedent, the Commission must reject any proposal to further crowd the FM spectrum with one or more new classes of additional radio outlets, unless the public benefit is demonstrably great and the potential for increased objectionable interference has been thoroughly tested and shown to be minimal. It has not been shown, through any acceptable testing, that the implementation of hundreds of new LPFM stations risks only minimal objectionable interference, or even that the Commission could remedy promptly any interference that does result. Accordingly, under the Commission’s established standard, the proposed LPFM service should be denied.

II. THE RISKS LPFM IMPLEMENTATION POSE TO DIGITAL RADIO CORROBORATES THE NEED TO REJECT LPFM

Terrestrial radio does not yet know how and when it will be able to begin its transition to digital audio broadcasting (“DAB”). Until it does, a key element of what radio has to offer -- a quality audio signal -- risks falling behind the offerings of radio’s increasing number of competitors. The digital transmissions of the Internet, compact discs, and, soon, satellite radio

^{10/} Amendment of Section 73.202(b), Table of Assignments, FM Broadcast Stations. (Denver, Colorado), 46 RR 2d 1379 (1980). There, the Commission rejected a short-spaced proposal for a minority-owned radio station in Denver, noting that “to justify a waiver of the Commission’s rules on mileage separation requirements, the showing of need must be compelling. . . . While the need for a minority station in Denver is no doubt genuine, it falls short of the justification for waiver of the magnitude of the short-spacing rules involved here.” (citations omitted); *see, e.g., Quinnipiac College, Hamden, Connecticut, For a Construction Permit to Modify the Facilities of Noncommercial Educational FM Station WQAQ*, 8 FCC Rcd 6285 (August 30, 1993) (rejecting pleas of Class D NCE-FM station to ignore spacing requirements despite “anomalous facts” and lack of interference).

offer an undeniably clearer and sharper means of providing audio programming. As the economic viability of free, over-the-air radio depends on the quality of its audio signal, neither radio nor the Commission can afford to risk further delay to the advent of digital audio broadcasts.

Any serious consideration of LPFM prior to the implementation of DAB will result in such dangerous delay. First, introduction of LPFM prior to DAB would interfere with technical considerations critical to DAB. Presumably, digital radio will rely on an in-band, on-channel (“IBOC”) system, which involves the complicated task of creating digital side signals that are sufficiently strong as to be able to reach distant receivers but that do not interfere with analog or digital radio transmissions on adjacent channels. Having to take into account the potential for hundreds of new LPFM stations cannot help but add to the technical complications confronting DAB, which is still in the process of managing *existing* forms of on-channel and adjacent-channel interference. 11/

Second, delay will result from any attempt by the Commission to manage a DAB transition while supervising hundreds of new LPFM operators. Any addition of new radio stations adds to the Commission’s workload. The creation of entire new LPFM service, which will require new software and new service-specific regulations and will involve relatively inexperienced applicants, cannot help but impose huge new burdens on the Staff. 12/ In such

11/ Such concerns are not foreign to the Commission. Years prior to the start of the digital television transition period, the Commission froze applications for new television stations. *See Sixth Further Notice of Proposed Rulemaking, Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, 11 FCC Rcd 10968, 10992-93 (1996) (“To continue to accept new applications for NTSC stations, now that we are approaching the actual start of this new service, could potentially prolong the transition process.”)

12/ *See Notice* at ¶¶ 95, 98. For instance, the Commission has been working for many months to complete call sign software of seemingly less complexity than that proposed for new

circumstances, the Audio Services Division simply will not have sufficient staff remaining to ponder and resolve questions critical to DAB's future without significant delay.

A side-by-side analysis of the two proposals confirms that DAB implementation must precede consideration of LPFM. First, the transition to digital radio, unlike even the rosier projections for LPFM, promises demonstrable benefit to *all* radio listeners and broadcasters in the United States. Second, a prompt DAB transition is critical to the future viability of radio; a prompt LPFM implementation would simply add more radio stations. Third, the transition to digital is a finite process, which, after an initial transition phase, is unlikely to pose a significantly greater burden on FM; in contrast, the licensing and monitoring of LPFM stations presumably will be unending, and permanently will increase the burdens on radio spectrum and the Commission. Fourth, DAB implementation would prompt new interest in audio receiver technology, and give consumers a reason to obtain receivers -- unlike many clock or portable radios of today -- that might be better equipped to handle any introduction of LPFM signals; conversely, prior implementation of LPFM only will increase the likelihood that listeners will become dissatisfied by the low quality of radio signals in comparison to other forms of audio transmission.

Each of these reasons offer sufficient grounds for the Commission to refuse to consider any LPFM proposal at this time. Collectively, they require the Commission to reject or postpone consideration of LPFM until a DAB standard has been selected and widely implemented.

LPFM stations. *See 1998 Biennial Regulatory Review -- Amendment of Parts 73 and 74 Relating to Call Sign Assignments for Broadcast Stations*, 63 FR 71601 (1998).

III. OVERALL, THE RISKS POSED BY ANY LPFM PROPOSAL TO RADIO'S PRESENT AND IMMEDIATE FUTURE FAR EXCEED ANY PUBLIC GOOD OF SUCH A PROPOSAL

As noted, established Commission policy and precedent requires any proposal that could risk a measurable increase in interference to provide an overwhelming net benefit to the public interest. Adoption of the LPFM proposal, at this time, would interfere with the present success of radio, and may make it effectively impossible for the Commission to resolve interference between full and low power radio stations in any sort of timely manner. It also would reduce substantially the chances of a successful transition to the digital terrestrial radio, a transition which is critical to radio's ability to compete in the imminent future. In short, any LPFM proposal suffers from definite and substantial negatives.

Moreover, the potential positives of the *Notice's* proposal are limited and uncertain. The proposal hopes that more radio stations will lead to greater diversity in radio ownership or programming. Yet, past experience of the Commission has confirmed that "micro" FM stations do not significantly encourage any diversity of ownership. ^{13/} Similarly, LPFM stations would appear to add little to the diversity of content in today's multimedia world. Among other media, the unprecedented growth of the Internet has fostered new programming, and new accessibility to existing programming. As Chairman Kennard has noted, "Broadcast.com, and RealNetworks, and Spinner.com aren't just Internet companies, they're also broadcasters. In the coming world of convergence, both Internet companies and broadcasters have the opportunity to capture a huge new market." ^{14/} And the Internet is not just available to

^{13/} *Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations*, 69 FCC 2d 240 (¶ 21) (1978) (accepting that "micro" FM stations -- noncommercial Class D stations -- had little "substantive value for enhancing the opportunity for minority ownership").

^{14/} See Speech to the National Association of Broadcasters (April 20, 1999).

radio broadcasters, but to any individual willing to develop content. Accordingly, the presence of the Internet ensures that more people than ever before can share their views and interests with a greater audience.

At the very least, such considerations suggest that an LPFM proposal actually would be less in the public interest now than at any prior time in radio's history. More broadcast stations and the Internet (as well as other media, such as local access cable channels) offer more possibilities for diverse programming than ever before. And the urgency to transition all of radio into the digital age underscores the dangers of such a sweeping proposal to eliminate established interference protections and create hundreds or thousands of new stations. In light of the confluence of such circumstances, it is clear that the Commission should reject or postpone consideration of any LPFM proposal until such time as the proposal's demonstrable benefits are not outweighed by such clear and significant disadvantages.

V.

CONCLUSION

LPFM radio may someday offer the opportunity to fulfill the dreams of persons wanting to operate their own radio station. However, for all the foregoing reasons, and because the immediate future of radio is too important and too unsettled for the Commission to remove established interference protections and to add hundreds more broadcast outlets at this time Pilot asks that the Commission table consideration of any general LPFM proposal until DAB has been tested and broadly implemented throughout the United States.

Respectfully submitted,

PILOT COMMUNICATIONS, LLC

By: 

James Leven
President

August 2, 1999